

## **Senate Bill No. 1207**

### **CHAPTER 871**

An act to amend Section 708 of, and to add Section 708.5 to, the Corporations Code, relating to corporations.

[Approved by Governor September 30, 2006. Filed with  
Secretary of State September 30, 2006.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1207, Alarcon. Corporations: uncontested election of a listed corporation.

Existing law provides that, in any election of the members of the board of directors of a corporation, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected.

This bill would authorize a listed corporation that has eliminated cumulative voting to amend its articles of incorporation or bylaws to provide that, in an uncontested election, as defined, approval by a majority of the shares represented and voting would be required to elect each director and would specify procedures to be followed if an incumbent director fails to be elected at such an election.

*The people of the State of California do enact as follows:*

SECTION 1. Section 708 of the Corporations Code is amended to read:

708. (a) Except as provided in Sections 301.5 and 708.5, every shareholder complying with subdivision (b) and entitled to vote at any election of directors may cumulate such shareholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which the shareholder's shares are normally entitled, or distribute the shareholder's votes on the same principle among as many candidates as the shareholder thinks fit.

(b) No shareholder shall be entitled to cumulate votes (i.e., cast for any candidate a number of votes greater than the number of votes that the shareholder normally is entitled to cast) unless the candidate or candidates' names have been placed in nomination prior to the voting and the shareholder has given notice at the meeting prior to the voting of the shareholder's intention to cumulate the shareholder's votes. If any one shareholder has given that notice, all shareholders may cumulate their votes for candidates in nomination.

(c) Except as provided in Section 708.5, in any election of directors, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares are elected; votes against the director and votes withheld shall have no legal effect.

(d) Subdivision (a) applies to the shareholders of any mutual water company organized or existing for the purpose of delivering water to its shareholders at cost on lands located within the boundaries of one or more reclamation districts now or hereafter legally existing in this state and created by or formed under the provisions of any statute of this state, but does not otherwise apply to the shareholders of mutual water companies unless their articles or bylaws so provide.

(e) Elections for directors need not be by ballot unless a shareholder demands election by ballot at the meeting and before the voting begins or unless the bylaws so require.

SEC. 2. Section 708.5 is added to the Corporations Code, to read:

708.5. (a) For purposes of this section, the following definitions shall apply:

(1) “Uncontested election” means an election of directors in which, at the expiration of the time fixed under the articles of incorporation or bylaws requiring advance notification of director candidates or, absent such a provision in the articles of incorporation or bylaws, at a time fixed by the board of directors that is not more than 14 days before notice is given of the meeting at which the election is to occur, the number of candidates for election does not exceed the number of directors to be elected by the shareholders at that election.

(2) “Listed corporation” means a domestic corporation that qualifies as a listed corporation under subdivision (d) of Section 301.5.

(b) Notwithstanding paragraph (5) of subdivision (a) of Section 204, a listed corporation that has eliminated cumulative voting pursuant to subdivision (a) of Section 301.5 may amend its articles of incorporation or bylaws to provide that, in an uncontested election, approval of the shareholders, as specified in Section 153, shall be required to elect a director.

(c) Notwithstanding subdivision (b) of Section 301, if an incumbent director fails to be elected by approval of the shareholders (Section 153) in an uncontested election of a listed corporation that has amended its articles of incorporation or bylaws pursuant to subdivision (b), then, unless the incumbent director has earlier resigned, the term of the incumbent director shall end on the date that is the earlier of 90 days after the date on which the voting results are determined pursuant to Section 707 or the date on which the board of directors selects a person to fill the office held by that director pursuant to subdivision (d).

(d) Any vacancy on the board of directors resulting from any failure of a candidate to be elected by approval of the shareholders (Section 153) in an uncontested election of a listed corporation that has amended its articles

of incorporation or bylaws pursuant to subdivision (b) shall be filled in accordance with the procedures set forth in Section 305.

O